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Testimony of Robert J. Enright  
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**Senate Bill 1099 *An Act Concerning Certain Appeal Procedures***  
Judiciary Committee  
March 20, 2009

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to appear before the committee to comment in support of Senate Bill 1099, *An Act Concerning Certain Appeal Procedures*. My name is Robert Enright and I am the chair of the Connecticut Bar Association Workers' Compensation Section, whose members represent both claimants and respondents. The section has a great interest in legislation that concerns workers' compensation procedures and it **supports** Senate Bill 1099.

The purpose of the bill is to clarify that decisions of the Compensation Review Board (CRB) may be appealed by right, without satisfying the final judgment rule of C.G.S. Sec. 4-183 or Sec. 52-263. Connecticut General Statutes §31-301b, as presently written does not require a "final judgment," likely because workers' compensation cases are may last for years or even over the lifetime of the injured worker unless voluntarily settled. It is, therefore, difficult to determine when a judgment is final for purposes of appeal.

The decisions of the CRB resolve crucial issues in cases which should be reviewed, but the opportunity for meaningful appellate review is often delayed while the parties litigate to conclusion every issue, no matter how small. Currently, a court will not hear appeals of workers' compensation cases which have been remanded by the CRB,

however erroneous the grounds for remand, thus requiring what may be an unnecessary and erroneously ordered new trial.

The final judgment rule is not contained in statute; it was created by case law in several decisions issued by the Connecticut Supreme Court. The final judgment rule was recently revisited by the Supreme Court in Hummel v. Marten Transport, Ltd., 282 Conn. 477 (2007). In a concurring opinion, Justice Borden stated in pertinent part:

Furthermore, the majority opinion makes clear how jurisprudentially fragile the underpinning of the final judgment rule is in the workers' compensation context. I respectfully urge, therefore, that **now is the time for the interested groups and the legislature to revisit the question of whether a final judgment should be a subject matter jurisdictional requisite for an appeal from the workers' compensation review board.**

The CBA Workers' Compensation Section agrees that the legislature should act to clarify once and for all the requirements for appeal under §31-301b. The final judgment rule as currently applied to decisions of the CRB prohibits the appellate review of final decisions by trial commissioners which have been remanded for new trials, so that the decisions of the CRB in these cases are effectively not reviewable. The plain language of §31-301b arguably evinces a legislative intent that all decisions of the CRB should be appealable.

Because this bill is clarifying legislation, it should apply as of the date of passage and apply to pending appeals.

Thank you for the opportunity to comment in support of Senate Bill 1099, *An Act Concerning Certain Appeal Procedures*. I urge the Judiciary Committee to act favorably on the bill.